

The Judges of the International Court of Justice

One year from this February, the terms of office of five out of the fifteen judges on the International Court of Justice will expire. The coming months will be the ones leading up to the election or re-election of five judges by the General Assembly and the Security Council of the United Nations. It will be the time for leading jurists to comply with the mandate of Article Six of the Statute of the Court, which provides:

Before making these nominations, each national group is recommended to consult its highest court of justice, its legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of law.¹

In the twenty-three years which have passed since the first election on February 6, 1946, to fill the fifteen coveted seats for judges of this court, a body of precedent and tradition has gradually grown up surrounding the correct electoral procedure. Many aspects of these past elections have been analyzed by recognized scholars. Yet to date no one appears to have studied in any detail the prior professional background of those judges who have already been elected to this high international office.

One can hardly deny that all of the past and present judges of the International Court of Justice have proved themselves competent in their previous roles at the time of their election. Why were they chosen for this new distinction? To what extent were they similar to, or different from, each other in their educational and professional

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¹ International Court of Justice, *Charter of the United Nations. Statute and Rules of Court*, p. 38 (Series D. No. 1 2nd ed., May 1947).

experiences? It is commonly recognized that one's past experience and frame of reference frequently have great influence on one's future actions or decisions. A better appreciation of these judges' backgrounds may prepare the way for a future analysis of their individual decisions; but this article does not purport to cover either their values, or their philosophies of international law. Instead, it is intended to be a brief, objective, and statistical study of the nature of their past experiences. Through an appreciation of the type of man who has already been elected to the International Court of Justice, it may be possible to understand who is likely, or ought, to be elected as new judges in the months to come.

Key Factors

To begin, let us take the group of forty-two past and present judges of the International Court of Justice as a group. The impressive biography of each may be reduced to certain key factors such as his capacity to practice law, his previous experience as a judge, his connection with the United Nations, or his license to teach law at a recognized university. From such data, it is possible to construct the following chart:

Activity	Number of Judges
Private practice of law	12
Queen's Counsel, Inns of Court	4
Public prosecutor	3
Judge in courts of own country	16
Permanent Court of Arbitration	11
International Court of Arbitration	2
Permanent Court of International Justice	4
Other international organizations	3
Other arbitration	2
Legal training	41
Law professor	27
League of Nations	8
United Nations	26
Government service	37
Ambassador	10
Publications	33

Even a quick glance at these figures reveals some significant facts. Most of the men who subsequently became judges of the International Court of Justice have rendered some service to their governments. Frequently this has been in the capacity of legal adviser. Occasionally they have been cabinet ministers, delegates to representative assemblies,

or even chief executive officers of their countries. Approximately one-fourth have served as ambassadors.

In addition, a high proportion of the judges has had previous experience with the United Nations, of which the International Court of Justice is the judicial organ. For many of these, this association began with the San Francisco Conference at which the Charter of the United Nations was drafted, and it has continued over the years. Eight of the more elderly judges played an active role in the League of Nations. Twenty-six have been connected in one capacity or another with its successor organization, the United Nations.

The most common factor is, of course, the legal training undertaken by most of these judges in their earlier years. Only one man, V. K. Wellington Koo of China held no law degree. His official biography lists his degrees as being a B.A., M.A. and Ph.D. from Columbia University.²

A remarkable number of the judges have taught law in their own countries or abroad. Thus twenty-seven of the forty-two judges may be designated as having been "academic lawyers." A large percentage of these have distinguished themselves as professors of international law at well-known universities. A correspondingly high proportion (almost three fourths) of the judges have published law codes, articles or books, which are most frequently about topics related to international law.

Few Have Practiced Law

On the other end of the spectrum is the extent of the previous experience of judges of the International Court, both as practicing lawyers and as judicial officers. Out of this group of forty-two men, only three have served as public prosecutors. Not more than four are listed as having become King's Counsel or Queen's Counsel in the British Commonwealth. Only twelve have at some stage of their lives practiced law, and in most cases even this experience has been limited to several years.

It is particularly striking to note that no more than sixteen of the forty-two judges already elected to the court had had any previous judicial experience in any of the courts of their own countries. However, many of the most recently elected judges have had such experience. About the same number of judges had served on the Permanent Court of Arbitration, the International Court of Arbitration, or on other assignments as sole arbitrators. Four had previously been

² International Court of Justice, *Yearbook 1963-1964*, P. 4 (1964).

judges of the Permanent Court of International Justice, which has been succeeded by the International Court of Justice. Three have been associated with other international bodies, such as the European Court of Human Rights or the Permanent Conciliation Commission. In view of the fact that a higher proportion of the newest judges comes from a judicial rather than an academic background than had previously been the case, is prior judicial experience desirable or necessary for performance of one's duties as a judge of the International Court of Justice?

Their Age

Because of the many and varied achievements composing the background of each judge at the time of his election, a question immediately arises about the ages of such men. Leadership and professional eminence often require not only maturity on the part of the individual, but also the respect of others based on decades of success. How old are the judges of the International Court of Justice?

The average age of the past and present judges at the time of their election, as based on a statistical analysis of their official biographies which are given in the Yearbooks of the International Court of Justice and the International Who's Who, was 61.76 years. This can be reduced further to the age groupings which are shown in the following chart:

Age bracket	Number of judges
49 - 54	5
55 - 60	12
61 - 65	14
66 - 70	7
71 - 75	2
76 - 80	2

These figures demonstrate that half of the judges have been between fifty-five and sixty-five years of age at the commencement of their nine-year terms of office as judges of the court. Only five have been younger than fifty-five, whereas eleven have been older than sixty-five. Nevertheless, it may be noted that two of the early judges who were among the youngest at the time of election, lacked the physical vigor of some of their elder colleagues. Thus Judge Azevedo of Brazil died while he was in his late fifties before his term of office was completed. Judge Golunsky of the U.S.S.R. was in such ill health when he was elected at fifty-six years of age that he never actively served on the court, and resigned in 1953.

This is not to imply that young judges are unsatisfactory or that elderly ones are superior. In fact, one may raise certain questions about age. Do people retain their flexibility of outlook as age progresses? What are the increased chances of physical and mental disabilities with advancing age? If the legal profession is increasingly manned by men under sixty-five as compulsory retirement is introduced in law firms, what will their attitude be toward the older men on the world court? Can older statesmen keep abreast of the increasingly complex commercial, technological, legal and social problems which ought to be brought before this tribunal? Finally, if the caseload of the court were to be increased, could such men carry the extra burden? These are questions to be considered in the choice of future judges.

Despite the prevalent use of statistics in modern research studies, it must never be forgotten that the individual case does not necessarily conform to the mean. Particularly with regard to such outstanding men as those who have, and are likely to, become judges of this tribunal, their age and previous experience will doubtless prove to be highly individualistic at their election.

Their Backgrounds

The Americans

Statistics are often criticized as being either potentially misleading or dull. Far more interesting are the biographical data of various individual judges which serve to illustrate the numerical details already set forth above.

First, one could compare the careers of the two Americans who have sat on the International Court of Justice. Green H. Hackworth exemplified the judge who had previously served as a career diplomat. Following his graduation from Valparaiso, Georgetown and George Washington Universities, he became associated with the Department of State from 1925 to 1946 as a Legal Adviser. He represented the United States Government during these years before numerous commissions and at many international conferences, including: the International Joint Commission (formed by Canada and the United States, 1923-1946); the Hague Conference on the Codification of International Law (1930); the eighth International Conference of American States (Lima, 1938); the Moscow Conference (1943); and the Dumbarton Oaks Conference on international organization (Washington, 1944). His interested activity connected with the United Nations and the International Court of Justice continued as he served as Chairman of

the United Nations' Committee of Jurists to prepare a draft for the Statute of the International Court of Justice (Washington, 1945); Adviser to the United States delegation at the United Nations Conference in San Francisco (1945); and Senior Adviser of the United States delegation at the first part of the First Session of the United Nations General Assembly (London, 1946).

There is no evidence that Judge Hackworth ever served in a judicial capacity in an American Court prior to his election as judge of the International Court of Justice on February 6, 1946. Furthermore, his official biography includes no data as to his actual practice of law, although he was a member of the Bar of the District of Columbia, and admitted to practice before the Supreme Court of the United States. He was an author of an eight-volume *Digest of International Law* published in 1944.³ He became President of the International Court of Justice in 1955. Nevertheless, his background was heavily weighted on the diplomatic, rather than in the academic or practical fields of law.

The pre-judicial experience of Philip C. Jessup, the second American to serve as judge of the International Court of Justice, was more varied. Following his education at Hamilton College, Columbia University, and the Yale University Law School, he was admitted to the Bar in the District of Columbia and also in New York State, where he was a member of a New York law firm from 1927 to 1943. In addition, he taught international law at the Columbia University Law School from 1925 to 1961. Judge Jessup has published extensively in that area. He also served the Department of State in an advisory capacity on various matters throughout these years. Judge Jessup was a United States representative to the United Nations at certain sessions of the General Assembly and the Security Council between 1948 and 1953.⁴ In fact, the sole area in which Judge Jessup had not had previous experience on his election to the International Court of Justice, was that of serving as a judge in any of the courts of his country. He had been primarily, but not exclusively, an "academic lawyer."

Some Foreign Profiles

How do the foreign judges compare with the American ones? The oldest judge at the time of his election, and one of the most noteworthy on account of his opinions, was Alejandro Alvarez from Chile. He had become Professor of Law and Political Science in the

³ *Id.*, *Yearbook 1946-1947*, pp. 45-46 (1947).

⁴ *Id.*, *Yearbook 1963-1964*, pp. 12-13 (1964).

University of Chile after receiving his Doctorate of Law at the University of Paris. A member-founder or co-founder of many learned societies devoted to international law, he also served as Legal Adviser for Chile at various world conferences, particularly the Pan-American Conferences. Judge Alvarez had been a member of the Permanent Court of Arbitration at The Hague from 1907 to 1920. Yet he also had time to prepare more than a hundred publications on history, psychology and law.⁵ His concepts of international law are traceable in his decisions as a judge.

One of the most distinguished judges has been Dr. Kotaro Tanaka of Japan. He was trained in the Faculty of Law at Tokyo Imperial University before continuing his study of commercial law in the United States, France, Germany, Italy, and England. On his return to Japan, he became Professor and Dean of the Law Faculty at Tokyo Imperial University until 1939, as well as tutor to the Crown Prince and Princess of his country from 1951 to 1960. In addition to these activities, he became a member of the House of Peers (1946), member of the House of Councillors (1947-1950), and Minister of Education (1946-1947). His publications on law in Japanese, Italian, Spanish, French and English have been numerous. The fact that he was not active in affairs of the United Nations is unquestionably explained by Japan's position in the post-war years and her late admission to membership in the United Nations. Prior to the Second World War, Dr. Tanaka had been a member from 1923 to 1944, of the Jury of State Examination for administrative officials, lawyers and judges. Six years later, in 1950, he became Chief Justice of the Supreme Court of his country, before being elected a judge of the International Court of Justice in 1961.⁶ Clearly, he has had a distinguished career in virtually every area of law and public service.

Less varied have been the careers of two other judges, José Gustavo Guerrero of El Salvador and V. K. Wellington Koo from Nationalist China. Judge Guerrero had been his country's Minister of Foreign Affairs, Justice and Education. In addition, he was a diplomat prior to his involvement with the League of Nations (1929) and the Permanent Court of International Justice (1930-1946), of which he became President in 1936. He was among the first to be elected a

⁵ *Id.*, *Yearbook 1946-1947*, pp. 43-44 (1947).

⁶ *Id.*, *Yearbook 1963-1964*, p. 10 (1964).

member, and was elected the first President, of the newly constituted International Court of Justice.⁷

Similarly, V. K. Wellington Koo, who was elected to the International Court of Justice in January, 1957, and became its Vice-President in March, 1964, came from a background which was almost exclusively diplomatic. After receiving a Ph.D. in International Law and Diplomacy from Columbia University, he became a high official in the Chinese government before the Second World War. At the same time, he was a member of a Chinese Commission to draft a Constitution for the Republic. He became Chinese minister to Mexico, Cuba, Great Britain and the United States. As early as 1919, he represented China at the League of Nations. Thus it is not surprising to discover him among those prominent at the San Francisco Conference of 1945, and at subsequent sessions of the General Assembly of the United Nations. His lack of legal training obviated the chance of his having a legal practice or judicial experience prior to his election. His publications have apparently been limited to matters of Chinese interest.⁸ Nevertheless, V. K. Wellington Koo has unquestionably been a major figure in the diplomatic and international circles.

From the other side of the world, Judge Spiropoulos of Greece was elected to the International Court of Justice in September, 1957. He had already had a distinguished career as Professor of International Law and Rector of the University of Athens. As in the case of Judge Tanaka, Judge Spiropoulos' many publications on international law have been written not only in his native Greek, but also in several foreign languages, notably French and German. He represented Greece at various international conferences including the Conference for the Codification of International Law (1930), the Washington Committee of Jurists to draft the Statute of the International Court of Justice (1945), and the San Francisco Conference. He was Greek delegate to all the General Assembly sessions of the United Nations preceding his election to the court.⁹ There is no record of his having had any practical experience as a lawyer or a judge prior to that election. Thus, his is another example of a judge coming from an academic and diplomatic, rather than a practical legal, background.

This group of a few representative biographical sketches should include that of Arnold Duncan McNair, first Baron McNair of Gleniffer,

⁷ *Id.*, *Yearbook 1946-1947*, p. 42 (1947).

⁸ *Id.*, *Yearbook 1963-1964*, pp. 4-5 (1964).

⁹ *Id.*, *Yearbook 1963-1964*, pp. 7-8 (1964).

who represented Britain on the International Court of Justice until his death in 1965. He had studied law at Cambridge University, where he was President of the Cambridge Union, before becoming a bencher of Grey's Inn and Queen's Counsel. Later he returned to Cambridge, first as lecturer and fellow of Gonville and Caius College, later as Whewell Professor of International Law and also as Professor of Comparative Law. He is well known for his books on Civil and International Law. As a result of being knighted, Judge McNair became a member of the House of Lords. He advised his government with respect to such diverse matters as Indian problems and problems involving the coal industry. Baron McNair had been a member of the Permanent Court of Arbitration and President of the European Court of Human Rights; and he became President of the International Court of Justice.¹⁰ His long and distinguished career ended in his eightieth year.

These are the professional profiles of eight of the eminent men who have already been elected as judges of the highest world court. They are indicative of the type of men whom countries will choose to serve on the International Court of Justice.

Conclusion

During the coming months preceding the election or re-election of five judges to the International Court of Justice in February, 1970, it is not improper to consider the backgrounds and qualifications of those who have already become judges, in order to ascertain more clearly who the future judges ought to be.

It would not be amiss, during this time to ask some relevant questions. What sort of man, in age and experience, makes the best type of judge? Should the majority of the judges be recruited from diplomatic and academic circles, or ought more of them to have had practical experience as active members of the bar and as judges? Assuming that a judge is likely to approach his decisions from his own frame of reference, are the opinions of purely academic lawyers likely to be more theoretical than those handed down by former judges of national courts? Does the relative lack of judges with previous practical experience in law touch the effectiveness and reputation of the International Court of Justice as a judicial tribunal in international legal circles?

In addition, some major questions can be raised concerning the actual method of choosing such a judge. Under Article Six of the

¹⁰ *Id.* Yearbook 1946-1947, p. 49 (1947).

Statute of the International Court of Justice, nominations are to be made by a "national group," which is a select committee of four recognized jurists. Presumably the American national group would be strongly influenced by the recommendations of the Legal Adviser to the President of the United States. Moreover, they are enjoined to consult the highest court of justice, the schools of law and the "national academies and national sections of international academies devoted to the study of law"; but they would not necessarily be bound by recommendations from such sources in compiling a list of candidates. What should the role of the American Bar Association be in recommending candidates for the world court in view of its well-developed facilities to screen candidates for federal judgeships within the United States?

All of these are questions meriting thoughtful consideration in the months to come. Only then can the world be assured that every step has been taken to choose the best jurists to serve as judges of the International Court of Justice in the significant decades at the conclusion of the Twentieth Century.